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6 IN THE UNITED STATES DISTRICT COURT

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10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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THERASENSE, INC.,

No. C 04-02123 WHA

Plaintiff,

Consolidated with

v.

No. C 04-03327 WHA

BECTON, DICKINSON AND COMPANY,

No. C 04-03732 WHA

Defendant.

No. C 05-03117 WHA

AND CONSOLIDATED CASES.

**NOTICE RE POSSIBLE  
PLAN OF BIFURCATION**

At the final pretrial conference, counsel should be prepared to address the following possible trial plan: The first trial would be limited to the '551 patent. In the first trial on the '551, there would be three phases and all parties would participate. The first phase would cover all inequitable conduct issues and invalidity issues by all defendants, the overlapping evidence to be heard simultaneously by the judge and jury. An issue to be decided is whether to let the jury decide both issues. If needed, the second phase would cover all infringement issues for all accused products under the '551 patent (for all defendants). If needed, phase three would cover wilfulness and damages for all defendants. All of the foregoing would be before the same jury. A separate jury or juries would hear all issues relating to all other patents, the particulars to be decided later.

1 By the day before the final pretrial conference, any party may file up to five pages on  
2 the possible plan in memorandum form — no exhibits, no declarations, nothing but the five  
3 pages. The issue will also be discussed at the conference. The Court is distressed over the huge  
4 volume of “evidence” already piled up on what were promised to be simple and straightforward  
5 motions.

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7 **IT IS SO ORDERED.**

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9 Dated: May 6, 2008.

Wm. Alsup  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

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